Supreme Court, U.S.
FILED
NOV 24 1980
MICHAEL RODAK, JR., CLERK

No. 80-669

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1980

BENSON REALTY CORP., CHAI ASSOCIATES, INC., HINCKLEY REALTY CORP. 615 EAST 168TH ST. CORP., ROBERT BEREZIN, SHIRLEY BEREZIN, MORRIS FADER, ANITA FADER, COMMUNITY HOUSING IMPROVEMENT PROGRAM, INC., BRONX REALTY ADVISORY BOARD, INC., ASSOCIATED BUILDERS & OWNERS OF GREATER NEW YORK, INC., AND 383 EAST 17TH ST. INC., individually and on behalf of all others similarly situated,

*Appellants,*

*against*

EDWARD KOCH, AS MAYOR OF THE CITY OF NEW YORK, ANTHONY GLIEDMAN, AS ADMINISTRATOR OF THE HOUSING AND DEVELOPMENT ADMINISTRATION OF NEW YORK CITY, DANIEL W. JOY AS COMMISSIONER OF THE DEPARTMENT OF RENT AND HOUSING MAINTENANCE OF NEW YORK CITY, JOSEPH B. GOLDMAN, AS COMMISSIONER OF THE NEW YORK STATE DIVISION OF HOUSING & COMMUNITY RENEWAL AND CITY RENT AGENCY,

*Appellees.*

ON APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK

## MOTION TO DISMISS OR AFFIRM

ROBERT ABRAMS
Attorney General of the State of New York
*Attorney for Appellee*
JOSEPH B. GOLDMAN, Commissioner of the New York State Division of Housing & Community Renewal and *pro se*, pursuant to New York Executive Law, § 71
Two World Trade Center
New York, New York 10047
212—488-3446

SHIRLEY ADELSON SIEGEL
Solicitor General

DANIEL M. COHEN
Assistant Solicitor General
*of Counsel*

## Questions Presented

1. As to the State enabling acts (L. 1962, ch. 21 and L.1974, ch. 576) providing for rent regulation, which are and have been predicated upon a frequent periodic re-examination by the New York Legislature of the problem of whether an emergency exists or continues to exist with reference to the supply of housing accommodations: Whether the New York Court of Appeals properly held that the appellants, by their mere affidavits, which concentrated on the effect of control on property owners had not effectively rebutted the presumption that there was a factual basis for the Legislature's determination as to the continued existence of an emergency. No substantial federal question is presented.

2. Whether the New York Court of Appeals correctly held that the appellants' papers contained only generalized conclusions which did not establish an unconstitutional "taking" of the property of any individual property owner by the New York City Rent Control Law. No substantial federal question is presented.

## TABLE OF CONTENTS


| | PAGE |
|---|---|
| Questions Presented | i |
| Preliminary Statement | 1 |
| Opinions Below | 2 |
| Jurisdiction | 2 |
| Constitutional Provisions Involved | 3 |
| Statutes Involved | 3 |
| POINT I—The New York Court of Appeals properly held that the plaintiffs, by their mere affidavits, which concentrated on the effects of controls of property owners, had not effectively rebutted the presumption that there was a factual basis for the Legislature's determination that an emergency continued to exist as to the supply of housing accommodations. No substantial federal question is presented | 4 |
| POINT II—The Court of Appeals correctly held that the plaintiffs' papers contained only generalized conclusions which did not establish an unconstitutional "taking" of the property of any individual property owner by the New York City Rent Control Law. No substantial federal question is presented | 7 |
| Conclusion | 9 |
| Appendix E | 1a |
| Appendix F | 5a |

PAGE

*Agins* v. *City of Tiburon*, No. 79-602, —— U.S. ——, 65 L.Ed. 2d 106, 100 S. Ct. —— (decided June 10, 1980) ..... 8

*Benson Realty Corp.* v. *Beame*, 50 N Y 2d 994 ... 2

*Benson Realty Corp.* v. *Beame*, 72 A D 2d 758, 41 N.Y.S. 2d 826 ..... 2

*City of New York* v. *State of New York*, 31 N Y 2d 804 (1972) ..... 5

*241 E. 22nd Street* v. *City Rent Agency*, 33 N Y 2d 134 (1975) ..... 6

*201 East 68th Street Corp.* v. *City Rent Agency*, 34 N Y 2d 560 (1974) ..... 6

*Helmsley* v. *Borough of Fort Lee*, 78 N.J. 200, 394 A. 2d 65(1978), app. dsmd., 440 U.S. 978 (April 2, 1979) ..... 7, 8

*Housing and Development Administration* v. *Community Housing Improvement Program, Inc.*, 83 Misc. 2d 977, 377 N.Y. Supp. 2d 520 (Civ. Ct. N.Y. 1975), rev'd 90 Misc. 2d 813, 396 N.Y. Supp. 2d 125 (App. Term), aff'd 59 A D 2d 773, 398 N.Y.S. 2d 520 (App. Div., 1977) ..... 8

*I.L.F.Y. Co.* v. *Temporary State Housing Rent Commission*, 10 N Y 2d 263 (1961), app. dsmd 369 U.S. 795 (1962) ..... 4

*Kerr* v. *Urstadt*, 33 N Y 2d 134 (1975) ..... 6

*Lincoln Bldg. Associates* v. *Barr*, 1 N Y 2d 413 (1956), app.dsmd. 355 U.S. 12 (1957) ..... 4

*Mayer* v. *City Rent Agency*, 46 N Y 2d 139 (1978) .. 6

*Nebbia* v. *New York*, 291 U.S. 502 (1934) ..... 8

*Olsen* v. *Nebraska*, 313 U.S. 236 (1941) ..... 8

## STATUTES CITED

*Federal*

PAGE

U.S. Constitution, Fifth Amendment ..... 3

U.S. Constitution, Fourteenth Amendment ..... 3

28 U.S.C. § 1357(2) ..... 2

28 U.S.C. § 2101(c) ..... 2

*New York State*

1962 N.Y. Laws, ch. 21 ..... 1, 3

1971 N.Y. Laws, ch. 371 ..... 3, 5

1971 N.Y. Laws, ch. 372 ..... 3, 6

1971 N.Y. Laws, ch. 373 ..... 3

1971 N.Y. Laws, ch. 374 ..... 3

1971 N.Y. Laws, ch. 375 ..... 3

1971 N.Y. Laws, ch. 1012 ..... 6

1974 N.Y. Laws, ch. 576 ..... 1, 3

1977 N.Y. Laws, ch. 203 ..... 3

New York Executive Law, § 71 ..... 2

*New York City*

New York City Administrative Code, Chapter 51, Title Y, §§ 51-1.0-18.0 ..... 3

New York City Administrative Code, Chapter 51, Title YY, §§ 51-1.0-7.0 ..... 3

Local Laws of the City of New York, Local Law 24, §§ 2 and 3 ..... 6

Local Laws of the City of New York, Local Law 76 .. 6

No. 80-669

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1980

BENSON REALTY CORP., CHAI ASSOCIATES, INC., HINCKLEY REALTY CORP. 615 EAST 168TH ST. CORP., ROBERT BEREZIN, SHIRLEY BEREZIN, MORRIS FADER, ANITA FADER, COMMUNITY HOUSING IMPROVEMENT PROGRAM, INC., BRONX REALTY ADVISORY BOARD, INC., ASSOCIATED BUILDERS & OWNERS OF GREATER NEW YORK, INC., AND 383 EAST 17TH ST. INC., individually and on behalf of all others similarly situated,

*Appellants,*

*against*

EDWARD KOCH, AS MAYOR OF THE CITY OF NEW YORK, ANTHONY GLIEDMAN, AS ADMINISTRATOR OF THE HOUSING AND DEVELOPMENT ADMINISTRATION OF NEW YORK CITY, DANIEL W. JOY AS COMMISSIONER OF THE DEPARTMENT OF RENT AND HOUSING MAINTENANCE OF NEW YORK CITY, JOSEPH B. GOLDMAN, AS COMMISSIONER OF THE NEW YORK STATE DIVISION OF HOUSING & COMMUNITY RENEWAL AND CITY RENT AGENCY,

*Appellees.*

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

## MOTION TO DISMISS OR AFFIRM

### Preliminary Statement

The Attorney General of the State of New York, appearing herein as counsel for the State Commissioner of Hous-

ing and Community Renewal, appellee, and in his statutory capacity pursuant to New York Executive Law, § 71, moves to dismiss the appeal taken to this Court from the final order and judgment of the Court of Appeals of the State of New York entered in this action on June 26, 1980.

## Opinions Below

The New York Court of Appeals opinion is reported at 50 N Y 2d 994, *sub nom. Benson Realty Corp.* v. *Beame.* The Appellate Division opinion is reported at 72 A D 2d 758, 41 N.Y.S. 2d 826. The decision at Special Term, Kings County is unreported, but is reproduced in the appellants' appendix (App. C., pp. 7a-13a).

## Jurisdiction

Appellants claim that this Court may take jurisdiction pursuant to 28 U.S. Code, §§ 1357(2) and 2101(c). Although the appellants designate the judgment and order appealed from as final, it must be observed, at the outset, that the Court of Appeals declaration of constitutionality, contained in the order and judgment, stemmed from the Court's finding "that plaintiffs have not rebutted the presumption of constitutionality" predicated upon the Legislature's explicit finding with reference to the inadequate supply of residential housing accommodations (50 N Y 2d 994). Any element of finality in the order and judgment, therefore, appears to have stemmed from a failure of proof, a factual matter which does not merit review by this Court.

The following are the constitutional and statutory provisions which the appellants claim to be involved (Jur. Statement, p. 3).

## Constitutional Provisions Involved

The Fifth Amendment to the Constitution provides in pertinent part as follows:

> No person shall . . . be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Fourteenth Amendment to the Constitution provides, in pertinent part, as follows:

> . . . No state shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws.

## Statutes Involved

Laws of the State of New York for 1962, Chapter 21, as amended (the Local Emergency Housing Rent Control Act);

Laws of the State of New York for 1974, Chapter 576, as amended (the Emergency Tenant Protection Act);

The New York City Administrative Code, Chapter 51, Title Y, §§ Y51-1.0-18.0, as amended (New York City Rent and Rehabilitation Law);

The New York City Administrative Code, Chapter 51, Title YY, §§ YY51-1.0-7.0, as amended (New York City Rent Stabilization Law);

The foregoing are set forth in part in Appellants' Appendix D. They should be supplemented, at least, by Laws of New York, 1977, Chapter 203 and Laws of New York, 1971, Chapters 371, 372, 373, 374, 375 and 1012 contained in appendices to this motion (App. E and F, *infra*).

## POINT I

**The New York Court of Appeals properly held that the plaintiffs, by their mere affidavits, which concentrated on the effects of controls of property owners, had not effectively rebutted the presumption that there was a factual basis for the Legislature's determination that an emergency continued to exist as to the supply of housing accommodations. No substantial federal question is presented.**

(1)

Prior attempts to attack the constitutionality of New York's rent regulatory legislation were rejected by this Court in *I.L.F.Y. Co.* v. *Temporary State Housing Rent Commission,* 10 N Y 2d 263 (1961), app. dsmd. 369 U.S. 795 (1962) and in *Lincoln Bldg. Associates* v. *Barr,* 1 N Y 2d 413 (1956), app.dsmd. 355 U.S. 12 (1957). The Court dismissed the appeals there taken for want of a substantial federal question. The appellants' jurisdictional statement in this case fails to present such a question, particularly in the light of the unsatisfactory record upon which it is predicated.

The jurisdictional statement has apparently been prepared to avoid significant aspects of New York legislative and judicial history. It stresses an assertion that rent control "has been in effect for the past 37 years" (p. 4), and creates the erroneous impression that there have been no legislative "emergency" findings for 37 years (p. 15), but ignores the fact, judicially noted by the Court of Appeals, that the need for rent control in New York had been "re-examined legislatively at intervals of three years". Indeed the Court of Appeals observed in a portion of its opinion avoided by the appellants, that "the most recent such review" by the New York State Temporary Commission on Rental Housing (which included four landlord representatives) had, in a report submitted

March 27, 1980, concluded that (Jur. Statement, pp. 1a-2a):

> "There is need for continuing a form of rent regulation in those jurisdictions in which housing accommodations are presently subject to rent control or rent stabilization."*

Rent regulatory statutes have been carefully scrutinized and implemented by the New York Court of Appeals. The State's policy to *decontrol* residential accommodations *gradually* was sustained in *City of New York* v *State of New York,* 31 N Y 2d 804 (1972), where the so-called Vacancy Decontrol Law (L. 1971, ch. 371 § 6), which exempted housing accommodations that became vacant from regulation and control, was sustained as constitutional

---

* The Temporary Commission submitted to the Legislature a two-volume report on housing accommodation problems. The first volume (455 pages in length, supplemented by 191 pages of appendices consisted of the "COMMISSION STUDY AND RECOMMENDATIONS CONCERNING THE RENT REGULATORY SYSTEMS." The second volume (155 pages long, supplemented by five separate extended appendices) encompassed the "COMMISSION STUDY AND RECOMMENDATIONS ON CONVERSION OF RESIDENTIAL PROPERTY TO COOPERATIVE OR CONDOMINIUM STATUS". We do not deem it essential to burden the Court with these extensive reports, but will supply copies, if desired by the Court.

The members of the commission voted on at least 140 separate motions dealing with 114 recommendations made in the first volume of the report. The report was subscribed by the two public members of the eleven man Commission (one of the public representative memberships having remained vacant) with separate dissents by four tenant representatives and four landlord representatives each.

The first motion voted upon by the Commission (Report, Vol. I, Appendix B, p. 6) indicates that, as a preface to all the further deliberations of the Commission, its members (*all public, landlord and tenant representatives*) on January 16, 1979 "unanimously agreed" to the recommendation set forth in the Court of Appeals opinion as to the "need for continuing a form of rent regulation in those jurisdictions in which housing accommodations are presently subject to rent control or rent stabilization."

despite the City's argument that such decontrol invaded the *City's home rule powers.*

Further, in *241 E. 22nd Street* v. *City Rent Agency* and in *Kerr* v. *Urstadt,* both 33 N Y 2d 134 (1973), the State was sustained in its enactment of a statute (L. 1971, ch. 1012) which reposed in the State Commissioner of Housing a power to veto any proposed local rent *regulation* which was more stringent or restrictive than the provisions previously in force. Chapter 1012 was but a part of a package of bills passed during the 1971 legislative session dealing with the objective of facititating the transition from regulation to a normal market by removing the threat of stricter controls (33 N Y 2d 134, at pp. 142-144).

Chapter 372 of the Laws of 1971, which became a law on June 1, 1971, prohibited the enactment of *local laws* subjecting housing accommodations to more stringent or restrictive provisions of regulation and control "than those presently in effect." In *201 East 68th Street Corp.* v. *City Rent Agency,* 34 N Y 2d 560 (1974), the validity of chapter 372 was upheld and local rent control laws (Local Law No. 24 of Local Laws of the City of New York §§ 2 and 3) were invalidated as violative of the *state law.* The Court of Appeals noted that the arguments presented by the City and tenants' representatives should be addressed elsewhere for "the appropriate prompt remedy, if one be indicated, is legislative" (34 N Y 2d 560, at p. 562).

Furthermore, in *Mayer* v. *City Rent Agency,* 46 N Y 2d 139 (1978), it was held that the State Commissioner of Housing could not *validate* a so-called Labor Cost pass-along *Repeal* Law (N.Y. City Local Law No. 76 of 1977) because its repeal provisions violated the statutory prohibition against the enactment of local laws subjecting rent controlled housing accommodation to more stringent or restrictive regulation and control than that in effect on June 1, 1971. The authority of approval of the Commissioner was held to be *limited* to local "rules and regu-

lations" and not to extend to local laws or ordinances (46 N Y 2d 139, at p. 152).

The New York Legislature has before it the report of its Temporary Commission on Rental Housing. No longer ago than January 16, 1979 it was agreed by all members of the Commission that there was a "continuing need" in New York for some form of rent *regulation*. Before July 1, 1981, the New York Legislature must decide what form, if any, such regulation should take. Particularly since the record, which will in 1981 be legislatively developed, on the basis of the Commission's recommendations (including the dissenting reports) and on the basis of Committee hearings, will be more *complete* and *current* than the materials contained in the present record, there is no present justification for this resort to judicial review.

The appellants have failed to present a substantial federal question to this Court for review, nor, upon this record, have they presented any reason for pressing this Court to eke out such a question. *Helmsley* v. *Borough of Fort Lee,* 78 N.J. 200, 394 A. 2d 65 (1978), app. dsmd., 440 U.S. 978 (April 2, 1979) "for want of a substantial federal question."

## POINT II

**The Court of Appeals correctly held that the plaintiffs' papers contained only generalized conclusions which did not establish an unconstitutional "taking" of the property of any individual property owner by the New York City Rent Control Law. No substantial federal question is presented.**

The appellants seek to resurrect (pp. 19-25) discarded doctrine that would elevate "regulation" to the status of property "taking". The New York statutes complained of *do not* authorize the "taking" of any property interests. They recognize the rights of landlords to collect rents.

That property interest is neither disregarded nor confiscated. But regulation thereof has been provided for under a series of statutes which have been carefully drafted to insure to landlords a proper return on their investment. When "regulation" has been extended, such extension has followed only upon a legislative finding that such extension was necessary. The instant record does not show that the New York state statutes have had a confiscatory impact. Similar arguments recently presented to this Court in *Helmsley* v. *Borough of Fort Lee* (*supra*. 78 N.J. 200, 394 A. 2d 65, app. dsmd., 440 U.S. 978), were properly rejected by this Court, which found that they did not present a substantial federal question.* See also *Agins* v. *City of Tiburon,* No. 79-602, —— U.S. ——, 65 L.Ed. 2d 106, 100 S. Ct. —— (decided June 10, 1980).

---

* In that respect, this Court merely followed the well-established doctrine, never rejected since *Nebbia* v. *New York*, 291 U.S. 502 (1934) and *Olsen* v. *Nebraska,* 313 U.S. 236 (1941), that regulation is not tantamount to a condemnatory taking.

We are amazed that appellants (pp. 20, 23, 24) place so much reliance, in the face of this Court's precedents, upon the *dicta* contained in the pronouncements of an inferior New York court, which was held to have made those pronouncements in the absence even of *jurisdiction* to do so. We refer to the appellants' repeated references to the extraordinary decision in *Housing and Development Administration* v. *Community Housing Improvement Program, Inc.*, 83 Misc 2d 977, 377 N.Y. Supp. 2d 520 (Civ. Ct. N.Y. 1975), rev'd 90 Misc 2d 813, 396 N.Y. Supp. 2d 125 (App. Term), aff'd 59 A D 2d 773, 398 N.Y.S. 2d 520 (App. Div., 1977).

## CONCLUSION

**The appeal should be dismissed for want of a substantial federal question. If the appeal is not dismissed in all respects, the order of the Court of Appeals, entered June 26, 1980, from which this appeal is taken, should be affirmed.**

Dated: New York, New York
November 17, 1980

ROBERT ABRAMS
Attorney General of the
State of New York
*Attorney for Appellee, Goldman, Commissioner of the New York State Division of Housing and Community Renewal and Pro Se, pursuant to New York Executive Law, § 71*

SHIRLEY ADELSON SIEGEL
Solicitor General

DANIEL M. COHEN
Assistant Solicitor General and
member of the bar of the Supreme
Court of the United States

## Appendix E.

LAWS OF NEW YORK, 1977

CHAPTER 203

AN ACT to amend chapter five hundred seventy-six of the laws of nineteen hundred seventy-four and chapter three hundred twenty-nine of the laws of nineteen hundred sixty-three, relating to the control of and stabilization of and recontrol of rent in certain cases and the emergency housing rent control law, in relation to the effective date of such chapters and law and creating a temporary state commission on rental housing to make a comprehensive study of the condition and economics of rental housing throughout the state and all laws relating thereto, and to make recommendations thereon, and making an appropriation for the expenses of such commission Became a law June 1, 1977, with the approval of the Governor. Passed by a majority vote, three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

Section 1. Section seventeen of chapter five hundred seventy-six of the laws of nineteen hundred seventy-four, relating to the control of and stabilization of rent in certain cases, as amended by chapter four hundred eighty-six of the laws of nineteen hundred seventy-six, is hereby amended to read as follows:

§ 17. Effective date. This act shall take effect immediately and shall remain in full force and effect until the first day of July, nineteen hundred [seventy-seven] *eighty-one;* except that sections two and three shall take effect

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

with respect to any city having a population of one million or more and section one shall take effect with respect to any other city, or any town or village whenever the local legislative body of a city, town or village determines the existence of a public emergency pursuant to section three of the emergency tenant protection act of nineteen seventy-four, as enacted by section four of this act, and provided that the housing accommodations subject on the effective date of this act to stabilization pursuant to the New York city rent stabilization law of nineteen hundred sixty-nine shall remain subject to such law upon the expiration of this act.

§ 2. Section two of chapter three hundred twenty-nine of the laws of nineteen hundred sixty-three, relating to the recontrol of rents in certain cases, as amended by chapter three hundred twenty of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

§ 2. This act shall take effect immediately and the provisions of subdivision six of section twelve of the emergency housing rent control law, as added by this act, shall terminate on June thirtieth, nineteen hundred [seventy-seven] *eighty-one.*

§ 3. Subdivision two of section one of chapter two hundred seventy-four of the laws of nineteen hundred forty-six, constituting the emergency housing rent control law, as amended by chapter three hundred nineteen of the laws of nineten hundred seventy-five, is hereby amended to read as follows:

2. The provisions of this act, and all regulations, orders and requirements thereunder shall terminate on June thirtieth, nineteen hundred [seventy-seven] *eighty-one.*

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

§ 4. (a) A temporary state commission to be known as the temporary state commission on rental housing is hereby created to consist of eleven members to be appointed as follows: three by the governor, one of whom shall be chairman; three by the temporary president of the senate; one by the minority leader of the senate; three by the speaker of the assembly and one by the minority leader of the assembly. No person shall be a member of the commission while such person is a member of the senate or assembly. The commission shall choose from its members a vice chairman. Vacancies in the membership of the commission occurring from any cause shall be filled by the official authorized to make the original appointment in which the vacancy occurs.

(b) The duties of the commission hereby created shall be to make a study of and investigate the supplies, condition, and economics of and demand for rental housing throughout the state, their relationship to and effects upon state and local economies, and the operations of and effects of all state and local rent control laws and regulations; and to make recommendations as to what changes, if any, are needed in such laws.

(c) The commission may employ and at pleasure remove an executive director, counsel, and such other officers and clerical, stenographic, or technical assistants as it may require and fix their compensation within the amount appropriated therefor. The commission may sit at any place within the state and hold either public or private hearings. It, and each member thereof, shall have the power to administer oaths, take testimony, subpoena and compel the attendance of witnesses and the production of all books, papers, records and documents deemed material or pertinent to any subject within the scope of its investi-

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

gations and shall generally have, possess and exercise all of the powers of a legislative committee.

(d) The members of such commission shall receive no compensation for their services but shall be reimbursed for their expenses actually and necessarily incurred in the performance of their duties hereunder. Notwithstanding any inconsistent provisions of law, general, special or local, ordinance, city or county charter, no officer or employee of the state or of any civil division thereof, shall be deemed to have forfeited or shall forfeit his office or employment by reason of his acceptance of membership on such commission.

(e) The commission may request and shall receive from any department, division, board, bureau or other agency of the state and from any political subdivision or agency thereof, such assistance and data as will enable it to properly consummate its studies and investigations hereunder.

(f) The commission may report from time to time and shall make a final report of its proceedings and recommendations to the governor and to the legislature on or before November fifteenth, nineteen hundred seventy-eight.

(g) The sum of two hundred thousand dollars ($200,000), or so much thereof as may be necessary, is hereby appropriated to the commission hereby created and made immediately available for its expenses, including personal service, in carrying out the provisions of this act. The moneys herein appropriated to such commission shall be payable out of the state treasury on the audit and warrant of the comptroller on vouchers certified or approved by the chairman of the commission as prescribed by law.

§ 5. This act shall take effect immediately.

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

## Appendix F.

CHAPTER 371

AN ACT to amend the emergency housing rent control law, in relation to extending the state rent control program for two years and the computation of hardship increases thereunder and to amend such law and the local emergency housing rent control act in relation to providing for vacancy decontrol

Became a law June 1, 1971, with the approval of the Governor. Passed by a majority vote, three-fifth being present

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

Section 1. Subdivision two of section one of chapter two hundred seventy-four of the laws of nineteen hundred forty-six, constituting the emergency housing rent control law, as last amended by chapter four hundred eighty of the laws of nineteen hundred sixty-nine is hereby amended to read as follows:

2. The provisions of this act, and all regulation, orders and requirements thereunder shall terminate on June thirteenth, nineteen hundred [seventy-one] *seventy-three.*

§ 2. The opening paragraph of paragraph (a) of subdivision four of section four of such chapter, such paragraph (a) having been last amended by chapter twenty-one of the laws of nineteen hundred sixty-two, is hereby amended to read as follows:

The commission may from time to time adopt, promulgate, amend or rescind such rules, regulations and orders

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

as it may deem necessary or proper to effectuate the purposes of this act, including practices relating to recovery of possession; provided that such regulations can be put into effect without general uncertainty, dislocation and hardship inconsistent with the purposes of this act; and provided further that such regulations shall be designed to maintain a system of rent controls at levels which, in the judgment of the commission, are generally fair and equitable and which will provide for an orderly transition from and termination of emergency controls without undue dislocations, inflationary price rises or disruption. Provision shall be made pursuant to regulations prescribed by the commission, for individual adjustment of maximum rents where the rental income from a property yields a net annual return of less than [six] *seven and one-half* per centum of the valuation of the property. Such valuation shall be the current assessed valuation established by a city, town or village, which is in effect at the time of the filing of the application for an adjustment under the subparagraph properly adjusted by applying thereto the ratio which such assessed valuation bears to the full valuation as determined by the state board of equalization and assessment on the basis of assessment rolls of cities, towns and villages for the year nineteen hundred fifty-four and certified for such year by such board pursuant to section forty-nine-d of the tax law; provided, however, that where at the time of the filing of the application for an adjustment under this subparagraph such board has computations for such year indicating a different ratio for subclasses of residential property in a city, town or village, the commission shall give due consideration to such different ratio except ratios in excess of one hundred percent, provided, further, that where such board has not determined and certified any ratio pursuant to such section of such law for a city, town or village for such year, the commission shall apply the

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

ratio determined or certified by such board pursuant to section twelve hundred twelve of the real property tax law for the most recent year; except where there has been a bona fide sale of the property within the period between March fifteenth, nineteen hundred fifty-seven, and the time of the filing of the application, as the result of a transaction at arms' length, on normal financing terms at a readily ascertainable price and unaffected by special circumstances such as a forced sale, exchange of property, package deal, wash sale or sale to cooperative; provided, however, that where there has been more than one such bona fide sale within a period of two years prior to the date of the filing of such application the commission shall disregard the most recent of such sales if a prior sale within such two-year period was adopted as the valuation of the property in a proceeding under this subparagraph. In determining whether a sale was on normal financing terms, the commission shall give due consideration to the following factors:

§ 3. Paragraph (i) of subdivision two of section two of such chapter, as last amended by chapter three hundred thirty-seven of the laws of nineteen hundred sixty-one, is hereby amended to read as follows:

(i) housing accommodations [in one or two family houses] which [are or] become vacant [on or after April first, nineteen hundred fifty-three,] provided, however, that this exemption shall [remain effective only so long as the housing accommodations are not occupied for other than single family occupancy] *not apply or become effective where the commission determines or finds that the housing accommodations became vacant because the landlord or any person acting on his behalf, with intent to cause the tenant to vacate, engaged in any course of conduct (including, but not limited to, interruption or dis-*

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

*continuance of essential services) which interfered with or disturbed or was intended to interfere with or disturb the comfort, repose, peace or quiet of the tenant in his use or occupancy of the housing accommodations:* or

§ 4. Section ten of such chapter is hereby amended by adding thereto a new subdivision, to be subdivision five, to read as follows:

*5. It shall be unlawful for any landlord or any person acting on his behalf, with intent to cause the tenant to vacate, to engage in any course of conduct (including, but not limited to, interruption or discontinuance of essential services) which interferes with or disturbs or is intended to interfere with or disturb the comfort, repose, peace or quiet of the tenant in his use or occupancy of the housing accommodations.*

§ 5. Section eleven of such chapter is hereby amended by adding thereto a new subdivision, to be subdivision seven, to read as follows:

*7. Any tenant who has vacated his housing accommodations because the landlord or any person acting on his behalf, with intent to cause the tenant to vacate, engaged in any course of conduct (including, but not limited to, interruption or discontinuance of essential services) which interfered with or disturbed or was intended to interfere with or disturb the comfort, repose, peace or quiet of the tenant in his use or occupancy of the housing accommodations may, within ninety days after vacating, apply to the commission for a determination that the housing accommodations were vacated as a result of such conduct, and may, within one year after such determination, institute a civil action against the landlord by reason of such conduct. In such action the landlord shall be liable to the*

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

*tenant for three times the damages sustained on account of such conduct plus reasonable attorney's fees and costs as determined by the court. In addition to any other damages the cost of removal of property shall be a lawful measure of damages.*

6. Subdivision five of section one of chapter twenty-one of the laws of nineteen hundred sixty-two, such chapter constituting the local emergency housing rent control act, is hereby amended to read as follows:

5. Authority for local rent control legislation. At any time after the effective date of this act, each city having a population of one million or more, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws or ordinances in respect of the establishment or designation of a city housing rent agency. When it deems such action to be desirable or necessitated by local conditions in order to carry out the purposes of this section, such city, *except as hereinafter provided,* is hereby authorized and empowered to adopt and amend local laws or ordinances effective on or after May first, nineteen hundred sixty-two in respect of the regulation and control of residential rents, including but not limited to provision for the establishment and adjustment of maximum rents, the classification of housing accommodations, the regulation of evictions, and the enforcement of such local laws or ordinances. The validity of any such local laws or ordinances, and the rules or regulations promulgated in accordance therewith, shall not be affected by and need not be consistent with the provisions of the state emergency housing rent control law or with the rules and regulations of the temporary state housing rent commission thereunder.

*Notwithstanding any local law or ordinance, housing accommodations which become vacant shall be exempt from*

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

*regulations and control, provided, however, that this exemption shall not apply or become effective with respect to housing accommodations which, by local law or ordinance, are made directly subject to regulation and control by a city housing rent agency and such agency determines or finds that the housing accommodations become vacant because the landlord or any person acting on his behalf, with intent to cause the tenant to vacate, engaged in any course of conduct (including but not limited to, interruption or discontinuance of essential services) which interfered with or disturbed or was intended to interfere with or distrub* the comfort, repose, peace or quiet of the tenant in his use or occupancy of the housing accommodations. The removal of any housing accommodation from regulation and control of rents pursuant to the vacancy exemption provided for in this paragraph shall not constitute or operate as a ground for the subjection to more stringent regulation and control of any housing accommodation in such property or in any other property owned by the same landlord, notwithstanding any prior agreement to the contrary by the landlord.*

§ 7. Subdivision nine of section one of such chapter is hereby amended by adding thereto a new paragraph, to be paragraph (d), to read as follows:

*(d) It shall be unlawful for any landlord or any person acting on his behalf, with intent to cause the tenant to vacate, to engage in any course of conduct (including, but not limited to, interruption or discontinuance of essential services) which interferes with or disturbs or is intended to interfere with or disturb the comfort, repose, peace or quiet of the tenant in his use or occupancy of the housing accommodations.*

---

* So in original. [Word mispelled.]

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

§ 8. Subdivision ten of section one of such chapter is hereby amended by adding thereto a new paragraph, to be paragraph (h), to read as follows:

*(h) Any tenant who has vacated his housing accommodations because the landlord or any person acting on his behalf, with intent to cause the tenant to vacate, engaged in any course of conduct (including but not limited to, interruption or discontinuance of essential services) which interfered with or disturbed or was intended to interfere with or disturb the comfort, repose, peace or quite of the tenant in his use or occupancy of the housing accommodations may, within ninety days after vacating, apply for a determination that the housing accommodations were vacated as a result of such conduct, and may, within one year after such determination, institute a civil action against the landlord by reason of such conduct. Application for such determination may be made to the city housing rent agency with respect to housing accommodations which, by local law or ordinance, are made directly subject to regulation and control by such agency. For all other housing accommodations subject to regulation and control by local law or ordinance, application for such determination may be made to the state division of housing and community renewal. For the purpose of making and enforcing any determination of the state division, as herein provided, the provisions of sections seven, eight and ten, whenever they refer to the city housing rent agency, shall be deemed to refer to the state division. In such action the landlord shall be liable to the tenant for three times the damages sustained on account of such conduct plus reasonable attorney's fees and costs as determination by the court. In addition to any other damages the cost of removal of property shall be a lawful measure of damages.*

§ 9. This act shall take effect immediately, except that sections four, five, seven and eight shall take effect on the

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

tenth day after it shall have become a law and sections three and six shall take effect on June thirtieth, nineteen hundred seventy-one.

---

## CHAPTER 372

AN ACT to amend the local emergency housing rent control act, in relation to limiting the authority of a city having a population of one million or more to subject additional housing to the regulation and control of residential rents and eviction

Became a law June 1, 1971, with the approval of the Governor. Passed by a majority vote, three-fifths being present

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

Section 1. Subdivision five of section one of chapter twenty-one of the laws of nineteen hundred sixty-two, constituting the local emergency housing rent control act, is hereby amended to read as follows:

5. Authority for local rent control legislation. [At any time after the effective date of this act, each] *Each* city having a population of one million or more, acting through its local legislative body, [is hereby authorized and empowered to] *may* adopt and amend local laws or ordinances in respect of the establishment or designation of a city housing rent agency. When it deems such action to be desirable or necessitated by local conditions in order to carry out the purposes of this section, such city [is hereby authorized and empowered to], *except as hereinafter provided, acting through its local legislative body and not otherwise, may* adopt and amend local laws or ordinances

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

[effective on or after May first, nineteen hundrd sixty-two] in respect of the regulation and control of residential rents, including but not limited to provision for the establishment and adjustment of maximum rents, the classification of housing accommodations, the regulation of evictions, and the enforcement of such local laws or ordinances. The validity of any such local laws or ordinances, and the rules or regulations promulgated in accordance therewith, shall not be affected by and need not be consistent with [the provisions of] state emergency housing rent control law or with [the] rules and regulations of the [temporary] state [housing rent commission thereunder] *division of housing and community renewal.*

*Notwithstanding the foregoing, no local law or ordinance shall hereafter provide for the regulation and control of residential rents and eviction in respect of any housing accommodations which are (1) presently exempt from such regulation and control or (2) hereafter decontrolled either by operation of law or by a city housing rent agency, by order or otherwise. No housing accommodations presently subject to regulation and control pursuant to local laws or ordinances adopted or amended under authority of this subdivision shall hereafter be by local law or ordinance subjected to more stringent or restrictive provisions of regulation and control than those presently in effect.*

§ 2. This act shall take effect immediately.

---

## CHAPTER 373

AN ACT to amend the emergency housing rent control law and the local emergency housing rent control act, in relation to housing accommodations which are not the primary residence of the tenant in possession

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

Became a law June 1, 1971, with the approval of the Governor. Passed by a majority vote, three-fifths being present

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

Section 1. Subdivision two of section two of chapter two hundred seventy-four of the laws of nineteen hundred forty-six, constituting the emergency housing rent control law, is hereby amended by adding thereto a new paragraph, to be paragraph (1), to read as follows:

*(1) housing accommodations which are not occupied by the tenant in possession as his primary residence provided, however, that any such housing accommodation shall continue to be subject to rent control as provided herein unless the commission issues an order decontrolling such accommodation which the commission shall do upon application by the landlord, whenever it is established by any facts and circumstances which, in the judgment of the commission, may have a bearing upon the question of residence, that the tenant maintains his primary residence at some place other than at such housing accommodation.*

§ 2. Subdivision five of section one of chapter twenty-one of the laws of nineteen hundred sixty-two, constituting the local emergency housing rent control act, is hereby amended to read as follows:

5. Authority for local rent control legislation. At any time after the effective date of this act, each city having a population of one million or more, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws or ordinances in respect of the establishment or designation of a city housing rent agency. When it deems such action to be desirable or necessitated by local conditions in order to carry out

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

the purposes of this section, such city, *except as hereinafter provided,* is hereby authorized and empowered to adopt and amend local laws or ordinances effective on or after May first, nineteen hundred sixty-two in respect of the regulation and control of residential rents, including but not limited to provision for the establishment and adjustment of maximum rents, the classification of housing accommodations, the regulation of evictions, and the enforcement of such local laws or ordinances. The validity of any such local laws or ordinances, and the rules or regulations promulgated in accordance therewith, shall not be affected by and need not be consistent with the provisions of the state emergency housing rent control law or with the rules and regulations of the temporary state housing rent commission thereunder.

*Notwithstanding the foregoing, no local law or ordinance shall subject to such regulation and control any housing accommodation which is not occupied by the tenant in possession as his primary residence; provided, however, that such housing accommodation not occupied by the tenant in possession as his primary residence shall continue to be subject to regulation and control as provided for herein unless the city housing rent agency issues an order decontrolling such accommodation, which the agency shall do upon application by the landlord whenever it is established by any facts and circumstances which, in the judgment of the agency, may have a bearing upon the question of residence, that the tenant maintains his primary residence at some place other than at such housing accommodation.*

§ 3. This act shall take effect May first, nineteen hundred seventy-two.

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

## CHAPTER 374

AN ACT to amend the emergency housing rent control law, in relation to limitations on rent increases upon termination of rent controls in a municipality over classes of housing or all housing

Became a law June 1, 1971, with the approval of the Governor. Passed by a majority vote, three-fifths being present

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

Section 1. Subdivision one of section twelve of chapter two hundred seventy-four of the laws of nineteen hundred forty-six, constituting the emergency housing rent control law, as last amended by chapter three hundred thirty-seven of the laws of nineteen hundred sixty-one, is hereby amended to read as follows:

1. Whenever the commission shall find that, in any municipality specified by the commission, (a) the percentage of vacancies in all or any particular class of housing accommodations is five per centum or more, or, (b) the availability of adequate rental housing accommodations and other relevant factors are such as to make rent control unnecessary for the purpose of eliminating speculative, unwarranted, and abnormal increases in rents and of preventing profiteering and speculative and other disruptive practices resulting from abnormal market conditions caused by congestion, the controls imposed upon rents by authority of this act in such municipality or with respect to any particular class of housing accommodations therein shall be [forthwith] abolished *in the manner hereinafter provided;* provided however that, except as otherwise provided in this section, no controls shall be abolished

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

by the commission unless the commission shall hold a public hearing or hearings on such proposal at which interested persons are given a reasonable opportunity to be heard. Notice of such hearing shall be provided by publication in a daily newspaper published or having general circulation in the municipality affected not less than fifteen days prior to the date of the hearing.

§ 2. Subdivision two of section twelve of such chapter, as last amended by chapter three hundred thirty-seven of the laws of nineteen hundred sixty-one, is hereby amended to read as follows:

2. Notwithstanding the provisions of this section or any other provision of this act, the local governing body of a city or town, upon a finding that decontrol in such city or town is warranted after a public hearing upon notice by publication in a daily or weekly newspaper published or having general circulation in the city or town not less than twenty days prior to the date of hearing, and after notice to the commission, may adopt a resolution [requesting the commission] to decontrol all or any specified class of housing accommodation in such city or town. *Such resolution shall thereafter be filed with the division.* Upon receipt of any such resolution [the commission shall order] the controls imposed by authority of this act [to] *shall* be abolished in the city or town affected with respect to housing accomodations specified in such resolution *in the manner hereinafter specified.* [Such order of decontrol shall take effect on the first day of the fourth month following the month in which such resolution was received by the commission, and thereafter the provisions of this act shall not apply to any housing accommodations decontrolled by such order.] Notwithstanding the foregoing provisions of this paragraph, a city or town any portion of which is within the limits of an area designated as a

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

critical defense housing area by the federal government at the time of adoption of the decontrol resolution, shall not become decontrolled without the approval of the commission.

§ 3. Section twelve of such chapter is hereby amended by inserting therein a new subdivision, to be subdivision two-a, to read as follows:

*2-a. Upon the issuance of an order of decontrol or upon the filing of a resolution resulting in decontrol of a housing accommodation pursuant to subdivision two, such decontrol shall take place:*

*(a) if the landlord and tenant execute a written lease for a term of not less than two years wherein the landlord agrees to maintain the same services and equipment required by this act and which provides for an increase in the maximum rent not in excess of fifteen percent for the first year and not more than a second five percent increase for the second year and otherwise continues the terms and conditions of the existing tenancy; upon the execution of such lease;*

*(b) if the landlord offers the tenant a lease in accordance with the terms provided in paragraph (a) and the tenant fails to execute such lease, six months from the date that the commission issued the order or the date the municipality filed the resolution, provided that the landlord has notified the tenant in writing by certified mail that his failure to execute the lease within thirty days of such notification will result in the decontrol of the housing accommodation on the date set forth therein, such date to be the expiration of such thirty days or such six months, whichever is later; or*

*(c) if the landlord does not offer the tenant a lease in accordance with the terms provided in paragraph (a), two*

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

*years from the date the commission issued the order or the municipality filed the resolution.*

§ 4. This act shall take effect immediately.

---

## CHAPTER 1012

AN ACT to amend the local emergency housing rent control act, in relation to regulations

Became a law July 2, 1971, with the approval of the Governor. Passed by a majority vote, three-fifths being present

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

Section 1. Subdivision five of section one of chapter twenty-one of the laws of nineteen hundred sixty-two, constituting the local emergency housing rent control act, as amended by a chapter of the laws of nineteen hundred seventy-one entitled "An act to amend the local emergency housing rent control act, in relation to limiting the authority of a city having a population of one million or more to subject additional housing to the regulation and control of residential rents and eviction," is hereby amended to read as follows:

5. Authority for local rent control legislation. Each city having a population of one million or more, acting through its local legislative body, may adopt and amend local laws or ordinances in respect of the establishment or designation of a city housing rent agency. When it deems such action to be desirable or necessitated by local conditions in order to carry out the purposes of this section, such city, except as hereinafter provided, acting

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

through its local legislative body and not otherwise, may adopt and amend local laws or ordinances in respect of the regulation and control of residential rents, including but not limited to provision for the establishment and adjustment of maximum rents, the classification of housing accommodations, the regulation of evictions, and the enforcement of such local laws or ordinances. The validity of any such local laws or ordinances, and the rules or regulations promulgated in accordance therewith, shall not be affected by and need not be consistent with the state emergency housing rent control law or with rules and regulations of the state division of housing and community renewal.

Notwithstanding the foregoing, no local law or ordinance shall hereafter provide for the regulation and control of residential rents and eviction in respect of any housing accommodations which are (1) presently exempt from such regulation and control or (2) hereafter decontrolled either by operation of law or by a city housing rent agency, by order or otherwise. No housing accommodations presently subject to regulation and control pursuant to local laws or ordinances adopted or amended under authority of this subdivision shall hereafter be by local law or ordinance *or by rule or regulation which has not been theretofore approved by the state commissioner of housing and community renewal* subjected to more stringent or restrictive provisions of regulation and control than those presently in effect.

§ 2. This act shall take effect immediately.

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.